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COMMERCIAL VEHICLE SAFETY ALLIANCE



An Association of State, Provincial and Federal Officials
Responsible for the Administration and Enforcement of Motor
Carrier Safety Laws in the United States, Canada and Mexico.

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February 14, 2002

Joseph M. Clapp
Administrator
Federal Motor Carrier Safety Administration
MC-A
U.S. Department of Transportation
400 Seventh St., SW
Washington, DC 20590

DEPT. OF TRANSPORTATION
OFFICE
02 AUG 21 PM 2:14

RE: Preemptive Effect of the Interim Final Rule Implementing 49 U.S.C. 5103a

Dear Administrator Clapp:

The Commercial Vehicle Safety Alliance (CVSA)¹ is writing to stress the need to include a statement clarifying the preemptive effect of the interim final rule being developed to implement the Commercial Drivers License (CDL) background check provisions mandated by the USA Patriot Act (Act) [49 U.S.C. § 5103a]. Section 5103a has been incorporated into chapter 51 of title 49 United States Code, federal hazardous materials transportation law (FHMTL) where there are long-established standards of preemption at §5125 that should be applicable to §5103a.

CVSA recognizes that the Department of Transportation (DOT) has a statutory obligation to issue regulations that implement the USA Patriot Act and would like to direct your attention to potential problems caused by conflicting state requirements. While the interim final rule has not been published, we are concerned by the fact that state legislatures are enacting their own versions of the CDL background check requirement that may conflict with the federal rule.

Since the enactment of Act, California, Kentucky, Michigan, Minnesota, New Jersey, Pennsylvania, and Virginia legislatures have introduced bills to require background checks on individuals seeking CDLs with hazardous materials endorsements. We expect that more states will follow suit. If the effect of these state bills is to require non-reciprocal background checks that would conflict with the federal rule, there could be a significant negative impact on the enforcement of the requirements and on interstate trucking operations, as well.

While uniformity must be its cornerstone, this aspect of the CDL program unfortunately has diminished over time. As is the case with any federally mandated and state-implemented

¹ CVSA is a non-profit organization of federal, state, and provincial government agencies and representatives from private industry in the United States, Canada and Mexico dedicated to improving commercial vehicle safety. The Alliance serves as the major focal point for bringing together state/provincial officials with truck/bus industry interests and federal governments in a unique discussion and problem solving interchange.

program, unless there is national uniformity in its administration, the overall effectiveness of the program is reduced and nationwide enforcement of its associated requirements is severely impacted. Such is the present state of the CDL program. Moreover, problems associated with the present program will only be exacerbated by unilateral implementation of CDL background check requirements by the states.

To avoid inconsistent action by states or local governments and unnecessary preemption litigation, we urge your agency to use this opportunity to include a statement in the interim final rule that makes clear the preemptive effect of the FHMTL on dissimilar non-federal requirements. In doing so, DOT will have taken a major step toward improving the CDL program by enhancing uniformity in this national program.

We would be pleased to discuss this matter with you at your convenience.

Sincerely yours,

A handwritten signature in black ink, reading "Stephen F. Campbell". The signature is written in a cursive, flowing style.

Stephen F. Campbell
Executive Director

cc: Judith A. Rutledge, FMCSA Acting Chief Counsel
Charles Medalen, FMCSA Attorney, Enforcement and Regulatory Affairs
Ed Bonekemper, RSPA Chief Counsel